Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

IN RE:

BALBIR SINGH TULI,

DEBTOR.

BALBIR SINGH TULI,

PETITIONER

VS.

SPRECHER ENERGIE A.G.;

SPRECHER + SCHUH GROUP,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Balbir Singh Tuli
7373 E. Scottsdale Mall, Suite 1
Scottsdale, Arizona 85251
(480) 949-8000

Pro Se Petitioner
as the representative of his Chapter 11
Bankruptcy Estate retained by his confirmed Plan
of reorganization.

34PP

THE QUESTIONS PRESENTED FOR REVIEW BY THE SUPREME COURT OF THE UNITED STATES

Which of the two Bankruptcy Code §§ 553(a) and 1141(c) controls after confirmation of chapter 11 plan?

Whether the conflict between the Third and the Ninth Circuits in dealing with the tension between general provisions of § 553(a) and special provisions of § 1141(c) of Bankruptcy Code (11 U.S.C.), should be resolved by adopting Third Circuit's reconciliation in In re Continental Airlines, 134 F.3d 536, 541-42 (3rd Cir.1998) "hold[ing] that the right of a creditor to setoff in a bankruptcy reorganization proceeding must be duly exercised in the bankruptcy court before the plan of reorganization is confirmed; the failure to do so extinguishes the claim"; relied by petitioner in courts below to oppose respondents obtaining automatic preservation of their pre-petition claim to setoff their disputed damages claims (objected to by debtor under § 502(a)), as the effect of § 553(a) under the Ninth Circuit's prior conclusion in In re Laurentiis Entm't Group, Inc., 963 F.2d 1269, 1276 (9th Cir. 1992), "that section 553 must take precedence over section 1141."

LIST OF THE PARTIES TO THE PROCEEDING IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

APPELLANT

BALBIR SINGH TULI, Pro Se
Represents his Chapter 11 Bankruptcy Estate Retained by his confirmed Plan of Reorganization

APPELLEES

ALSTOM AG
A Swiss corporation, f/k/a
SPRECHER ENERGIE A.G., GEC ALSTHOM T&D A.G.,
SPRECHER + SCHUH A.G., Main Appellant

ALSTOM, INC.
A New York corporation, f/k/a
SPRECHER ENERGIE, INC,, GEC ALSTHOM T&D, INC.,
Subsidiary of and accompanying Alstom AG

SPRECHER + SCHUH GROUP
Consisting of

SPRECHER + SCHUH (HOLDING) A.G.
A Swiss corporation

SPRECHER + SCHUH LTD.
A Swiss corporation

SPRECHER + SCHUH, INC.
A New York corporation

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28 U.S.C § 1254(1). 7

REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE CASE BY OTHER COURTS

Memorandum of the United States Court of Appeals for the Ninth Circuit in consolidated appeals Numbers 99-16871, 99-16910, filed 06/15/01. (Pages 1-3 of Appendix)

Memorandum of the United States Bankruptcy Appellate Panel of the Ninth Circuit in BAP appeal number AZ-98-1410-PRMe, filed 06/30/99. (Pages 4-15 of Appendix)

Memorandum of the United States Bankruptcy Appellate Panel of the Ninth Circuit in BAP consolidated appeal Number AZ-97-1124-PRMe, filed 06/09/99. (Relevant part of Statement of Facts). (Pages 21-27 of Appendix)

Note: None of the above Memoranda was deemed appropriate for publication of the disposition.

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Date of the entry of the judgment or decree sought to be reviewed: 6/15/01

(See pages 18-20 of Appendix)

Date of any order respecting a rehearing, and the date and terms of any order granting an extension of time within which to file the petition for rehearing: 08/09/01

(See pages 16-17 of Appendix)

Statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by Writ of Certiorari: 28 U.S.C. § 1254(1)

Note: Judgment sought to be reviewed by Writ of Certiorari, was entered by the United States Court of Appeal for the Ninth Circuit in Civil Appeals Nos. 99-16871 and 99-16910.

STATUTES INVOLVED IN THE CASE SET OUT VERBATIM

BANKRUPTCY CODE., Section 1141 (11 U.S.C. § 1141)

§ 1141. Effect of confirmation.

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, an entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the

plan or in the order confirming th eplan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan --

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not --

(i) a proof of the claim based on such debt is filed or deemed filed under Section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity

security holders and general partners provided for by the plan.

(2) The confirmation of a plan does not discharge an individual debtor from any debt excepted from discharge under Section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if --

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under Section 727(a) of this title if a case were a case under Chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

COLLIER ON BANKRUPTCY, Fifteenth Edition Revised (Rel. 74--6/00 Pub. 219) (Mathew Bender & Co.,)

STATUTES INVOLVED IN THE CASE
(Continued)

BANKRUPTCY CODE., Section 553
(11 U.S.C. § 553)

§ 553. Setoff.

(a) Except as otherwise provided in this Section and in Section 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that --

(1) the claim of such creditor against the debtor is disallowed;

COLLIER ON BANKRUPTCY, Fifteenth Edition Revised (Rel. 74--6/00 Pub. 219) (Mathew Bender & Co.,)

Note: For other relevant provisions of Bankruptcy Code, see the Appendix. (page 37 et. seq.)

A CONCISE STATEMENT OF THE CASE

1. The main respondent, Alstom, and other respondents have evaded to obtain relief from automatic stay and to establish their claims and alleged rights to setoff, both disputed by petitioner in his bankruptcy schedules, in his pleadings filed, and by filing objection (dkt. 235, under section 502) to filed proofs of claims and informal proofs of claims.

2. To allow Alstom A.G. (f/k/a/ Sprecher Energie Ltd.) and other respondents to discharge their onus to establish their claims to setoff in any court or arbitration, the Bankruptcy Court on April 21, 1994 "stayed" petitioner's estate's adversary proceeding No. 92-1330, pending arbitration of Alstom's claim, and later abstained from it to allow them to litigate their claims in any court. (Abstention has not been upheld in peititioner's appeal from that order).

3. In connection with confirmation of petitioner's plan of reorganization (case dkt 240), in January 14, 1997 hearing, the court deemed it "appropriate" to deal with

respondent's claims in the Contested Matter commenced by petitioner and there was no objection raised to this at the hearing by any respondent.

4. Alstom withdrew proofs of claim filed in its name by petitioner after Alstom's failure to timely file them. Alstom withdrew the proofs of claims after petitioner filed objection to is claim and to its alleged right to setoff. Alstom did this after its failure to file a timely response to petitioner's said objection, and when under the Local Bankruptcy Rule 3007-1 the claims were liable to be disallowed.

5. After 7 years of effort to reorganize his business as a California general contractor, petitioner's Plan of Reorganization was confirmed by Amended Order (dkt 383), but the Bankruptcy Court expressly preserved respondents' claims to set off their disputed claims of damages not established by them prior to confirmation of Plan.

6. The following facts are noticed by the Bankruptcy Appellate Panel of the Ninth Circuit in the

underlying BAP appeal Nos. AZ-97-1124, AZ-97-1421 and AZ-98-1410, filed June 9, 1999 and June 30, 1999, respectively:

Debtor is a contractor. In 1982, he was managing director of an Indian corporation that he owned, Consort Constructions Ltd. Alstom, a Swiss corporation, entered into a contract with the State Organization of Electricity of the Republic of Iraq to build power plants in Iraq. Alstom then entered into two subcontracts with Consort for performance of the civil works on the projects.

Work commenced on the projects in 1982. In December 1982, Alstom ordered Consort off the job because of alleged defects in performance. In a letter dated February 27, 1984, Alstom set out its understanding of the sums that were due to Consort for Consort's work and also the sums it asserted Consort owed it for alleged breaches of contract. (Ex. 4 to debtor's First Amended Disclosure Statement). Alstom claimed contract damages that exceeded the amount

Alstom indicated it owed to Consort.

At some point, Consort assigned its claims against Alstom to debtor. Despite debtor's demand, Alstom has not paid the amounts set out in the 1984 letter, because it asserts that any amounts it owes Consort are more than offset by amounts it alleges Consort owes for Consort's breach of contract.

An involuntary bankruptcy petition was filed against debtor in 1991. The court entered an order for relief in November 1991.

In December 1992, . . .debtor commenced adversary proceeding No. 92-1330 in bankruptcy court against Alstom and the Sprecher Group, seeking turnover of the amounts set out in Alstom's 1984 letter, pursuant to § 542 [of Bankruptcy Code], as well as additional amounts as damages for alleged breach of the subcontracts. He claims turnover for amounts he asserts are undisputed, and which he claims exceed the amount of any setoff Alstom might have.

In mid-December, he filed two proofs of claim in the bankruptcy case on behalf of Alstom, asserting claims for setoff against the amounts debtor asserts Alstom owes him for the work Consort did on the Iraqi projects. In February 1997, the court dismissed the Adversary proceeding without prejudice. It also granted Alstom's motion to withdraw the proofs of claim that debtor had filed on Alstom's behalf and denied debtor's motion to reconsider that ruling.

The result of the court's orders was to require that any adjudication of that dispute take place in arbitration or in a court other than the bankruptcy court.

Debtor also argued that Alstom lost any right to setoff by failing to obtain a determination of its claims and by what debtor asserted was Alstom's inequitable conduct in the case, prior to the confirmation of his plan of reorganization by court.

A DIRECT AND CONCISE ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. Question presented on page 1 hereof, is a question of law of exceptional importance for fulfillment of the purposes of chapter 11 of the Bankruptcy Code (11 U.S.C.), declared by this Court, i.e., "reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors"[1] and "maximizing the value of the bankruptcy estate"[2], affecting a rule of law of national application in which there is an overriding need for national uniformity, involved in the decision below, on which two U.S. Court of Appeals for the Third and the Ninth Circuits have previously reached conflicting results, and "other courts considering this and similar questions are closely divided," involves dealing with tension between the general provisions of § 553(a) and the

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1 Pioneer Inv. Services v. Brunswick Associates, 113 S.Ct. 14898, 1495-1498 (1993).

2 Toibb v. Radloff, 111 S.Ct. 2197, 2201, 115 L. Ed. 2d 145 (1991).

special provisions of § 1141(c), and to "decide which of the two code sections controls[3] after confirmation of the chapter 11 plan of reorganization, and whether as the effect of § 553(a), claim of setoff survives confirmation and can be used when a creditor is sued by reorganized debtor or by any representative of the estate retained under the confirmed plan, or as the effect of § 1141(c), upon confirmation of plan, claim of setoff is extinguished to fulfill the aforesaid purposes of chapter 11.

2. In view of above and the second question presented on page 1 hereof, to resolve the conflict between the Circuits, this is a fit case to petition for a writ of certiorari in accordance with this court's view in United States v. Muniz, 374 U.S. 150, 83 S.Ct. 1850., 1852, 10 L.Ed.2d 805 (1963), and U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 238, 109 S.Ct. 1026,

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3 In re Continental Airlines,
134 F.3d 536, 541-542 (3rd Cir. 1998);

In re De Laurentiis Entertainment Group, Inc.,
963 F.2d 1269, 1274-1275, 1279 (9th Cir. 1992)

1028-29, 103 L.Ed.2d 290 (1989).

3. Grant of a writ of certiorari is requested to resolve the conflict between the Circuits on the construction of federal Bankruptcy Code section 1141(c) read with section 553(a), consistent with other provisions of the Code listed on page 5 hereof, (stated verbatim on pages 8-11 hereof and on pages 37-48 of Appendix), vitally affecting rehabilitation through reorganization under Chapter 11 nationwide, including rehabilitation of petitioner and his wholly owned and controlled subsidiary, Consort, and to pay creditors under petitioner's confirmed Plan of Reorganization in his pending chapter 11 bankruptcy case in the United States Bankruptcy Court for the District of Arizona. The confirmed Plan of Reorganization (dkt. #332, Case #91-10615-PHX-RTB) provides the means for rehabilitation in ¶¶ 7.0.5 and 14.01, for the implementation of which this petition is crucial:

> "All claims of debtor and of the estate shall be retained and enforced by the debtor as the property of the estate. For the benefit of Consort's creditors through Consort's reorganization through Tuli's rehabilitation,

Tuli shall prosecute BAP Appeals Nos. AZ-97-1124 and AZ-97-1421, and in the event BAP or Court of Appeals or U.S. Supreme Court permits, Tuli shall enforce his estate's claim of turnover under 11 U.S.C. § 542, as well as its claim of damages for willful violation of automatic stay under 11 U.S.C. § 362(h), by GEC Alsthom [now Alstom AG]." (Confirmed plan ¶ 7.0.5). "All rights claims and remedies of the estate shall be preserved by the Plan for enforcement by the debtor postconfirmation, for the benefit of creditors of Consort in case No. 97-01409-PHX-RTB through the reorganization of Consort through the rehabilitation of Tuli in case No. 91-10615-PHX-RTB." (Confirmed plan ¶ 14.01).

4. The decision below involved the question, on which two courts of appeals had previously reached a contrary result, is clear from the following excerpts from the Ninth Circuit's and its Bankruptcy Appellate Panel's decisions in petitioner's appeals, and the Ninth Circuit's prior decision relied by them

(963 F.2d 1269, 1276-1277), directly conflicting with the Third Circuit's decision (134 F.3d 536, 541-542 (3rd Cir. 1998):

BAP: "Debtor argues. . .that Alstom has lost its claims to setoff by failing to obtain its determination of those rights and its inequitable conduct in the bankruptcy court." (Appendix p. 9). "Under [the Ninth Circuit's] holding, § 553(a) automatically preserved any right appellees had to setoff their claims against amounts debtor asserts appellees owe him." (Appendix p.13)

Ninth Circuit: "In 1998, the bankruptcy court confirmed Plaintiff's plan under Chapter 11. The order preserved all claims that Plaintif had against Defendants. Defendants moved to amend the order to clarify that, if Plaintiff eventually recovers damages under the Iraqi susbcontracts, then Defendants' claims for setoffs against those damages are preserved. The court made that amendment, which Plaintiff now disputes. Specifically, he argues that any setoff was discharged automatically when the plan was confirmed. To the

contrary, this court has held that, under 11 U.S.C. § 553(a), pre-petition rights to setoff (like those that Defendants assert here) survive the general discharge of debts that occurs, under 11 U.S.C. § 1141, when a plan is confirmed. Carolco Television, Inc. v. Nat'l Broad. Co. (In re De Laurentiis Entm't Group, Inc.), 963 F.2d 1268, 1276 (9th Cir. 1992)." (Appendix pp. 2-3).

In re De Laurentiis Entertainment Group, Inc., 963 F.2d 1269, 1276-1277 (9th Cir. 1992):

"We conclude that section 553 must take precedence over section 1141."

In re Continental Airlines, 134 F.3d 536, 541-542 (3rd Cir. 1998):

"We recognize that a right of setoff is preserved under § in a bankruptcy proceeding but we believe that the right must be exercised by the creditor in timely fashion and appropriately asserted in accordance with other provisions of the Bankruptcy Code." (at 541.)

". . .the right of a creditor to setoff in a bankruptcy reorganization proceeding must be duly exercised in the bankruptcy court before the plan of reorganization is confirmed; the failure to do so extinguishes the claim." (at 542.)

5. Petitioner's contention that "[a]ny setoff was automatically discharged [permanently stayed, i.e., practically extinguished] when the plan was confirmed," based on the Third Circuit's view, because the respondents, rather than establishing their claims and right to setoff before plan confirmation, withdrew their claims against which petitioner filed objection and also disputed respondents' right to setoff. (dkt. 235.).

6. The Supreme Court declined to address identical question arising in a chapter 13 case, in Citizens Bank of Maryland v. Strumpf, 516 U.S. --, 133 L.Ed,2s 258, 116 S.Ct.--(1995) (See footnote on po. 264 of 133 L.Ed.2d), because respondents raised the contention for the first time before the Supreme Court. ("We decline to address

respondent's' contention, not raised below, that the confirmation of his Chapter 13 Plan under 11 USC § 1327 (11 USCS § 1327) precluded petitioner's exercise of its setoff right.") This important question deserves to be addressed by the Supreme Court in this Chapter 11 case in the interest of fulfillment of the purposes of Chapter 11 of the Bankruptcy Code, i.e., (1) to permit successful rehabilitation of debtors (NLRB v. Bildisco & Bildisco, 465 U.S. 513, 527, 104 S.Ct. 1188, 1196, 79 L.Ed.2d 482 (1984)); and (2) to maximize the value of the estate (Toibb v. Radloff, -- U.S. --, 111 S.Ct. 2197, 2201, 115 L.Ed.2d 145 (1991). See also Pioneer Inv. Services v. Brunswick Associates, 113 S.Ct. 1489, 1495, 1498 (1993) ("Chapter 11 provides for reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors.").

THE CONFLICT BETWEEN THE CIRCUITS ON THE CONSTRUCTION OF BANKRUPTCY CODE § § 1141(c) & 553(a), IS LIKELY TO BE RESOLVED IN FAVOR OF THE THIRD CIRCUIT'S BETTER VIEW OF THE LAW AND WILL CHANGE THE OUTCOME OF APPEAL BEFORE 9TH CIRCUIT FOR SUCCESSFUL REHABILITATION OF PETITIONER & HIS SUBSIDIARY

7. The question presented to be addressed by this Court, ultimately boils down to this:

WHICH IS THE BETTER CONSTRUCTION OF BANKRUPTCY CODE:

(1) § 553(a) preserves in a bankruptcy proceeding a pre-petition right to setoff, but that right must be exercised by the creditor in a timely fashion and appropriately asserted in accordance with other provisions of the Bankruptcy Code. In a Chapter 11 reorganization proceeding, that right must be duly exercised by the creditor before the plan of reorganization is confirmed; the failure to do so extinguishes the claim. In other words, the automatic stay of § 362(a) against exercise of a right of setoff against property of the estate (including a claim against the creditor), by the operation of § 1141(c) upon

confirmation of plan or reorganization and the retention of the property by debtor under the plan, becomes a permanent stay with the practical effect that of extinguishment. As concluded by the Third Circuit, or that:

(2) § § 1141(c) and 553(a) are in direct conflict with each other. The language of § 553(a) controls rest of the Code and, therefore, takes precedence over § 1141(c), and preserves a right to setoff after confirmation of a Chapter 11 plan of reorganization. As concluded by the Ninth Circuit.

8. The Third Circuit's construction is better than that of the Ninth Circuit, in view of the following:

(a) The overriding language of § 553(a), to the extent it purports to control rest of the Code, must be strictly construed. Not liberally applied to render ineffective § 1141(c) in respect of an unestablished claim of setoff right, and in respect of a claim which is in dispute. § 553(a), even if literally construed, purports to keep unaffected "right of a creditor to offset", i.e., an established claim of right to setoff, when the creditor's claim to be setoff or its claim of right to

setoff is disputed or questioned by trustee or debtor-in-possession. Hence, an unestablished claim of setoff is not preserved after confirmation of a plan of reorganization, and § 553(a) does not take precedence over § 1141(c).

(b) The overriding language of § 553(a) is merely to clarify that in a bankruptcy proceeding, a valid pre-petition right to setoff held by a creditor shall not be rejected as a preference, but subject to the Bankruptcy Court's discretion as a court of equity, the creditor may (not shall) be permitted to exercise its right in accordance with the requirements of the Code for such exercise of valid right to setoff.

(c) A confirmed plan or reorganization, if deemed to preserve a disputed and unestablished setoff claim against a claim which was property of the estate and is retained by debtor under the plan, would make the plan unfair and inequitable to unsecured creditors and to the debtor, and on appeal from the order of confirmation, the order shall be modified and those claims of setoff which were not established to be valid before confirmation of the plan, shall not be

preserved by the plan. Therefore, only those setoff claims which have the validity to treat a creditor's claim as a secured claim under § 506, can be treated as such in plan confirmation under § 1129(b) as "fair and equitable" and not discriminative plan. Baker v. Gold Seal Liquors, 417 U.S. 467, 470-474 (1974), is instructive in this connection. ("The public interest, as well as the interests of creditors and stockholders, is at issue.[4] Hence, in Bankruptcy Court's discretion properly exercises by equitable balancing of the interests involved, while keeping the overriding aim of rehabilitation of debtor in view, the court may provide otherwise as provided in § 1141(c)'s exception.

(d) The Third Circuit's construction is consistent

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4 The contours of plans have emerged which have given new meaning and insight into the statutory words "fair and equitable." The preference sought here shows no exceptional circumstances which in equity justify the discrimination.

with Code sections 362 and 363, (which control operation of section 553(a), as also with the connected provisions listed on page 5 hereof, the Ninth Circuit's construction is inconsistent with those provisions of the Code. (Pages 6-9 hereof and 37 et. seq. of Appendix.) A court's sole function is to enforce statutory language, unless . . . "the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters." United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 109 S.Ct. 1026, 1031, 1032 L.Ed.2d 290 (1989). "[T]hose who drafted [the Bankruptcy Code] knew that [the] free exercise [of setoff rights] could inhibit rehabilitation and bankruptcy policies like fair distribution of funds inadequate to satisfy the debts of the petitioner in bankruptcy. . . . Even creditors whose claims are secured under the Code must submit to the risk inherent in judicial suspension [supervision] of the rights they normal would have to enforce their claims against property of the debtor." In re Cascade Roads, Inc., 34 F.3d 756, 766 (9th Cir. 1994), quoting approvingly from Third Circuit's Norton

decision, 717 F.2d at 773, which is relied by that Circuit in In re Continental Airlines, supra.

(e) Chapter 13 precedents support In re Continental Airlines view. They should apply to Chapter 11, because of similarity of language of § 1327 and § 1141. § 1327 has uniformally been held to be not affected by § 553(a). There is no justifiable reason to treat § 1141(c) differently than § 1327, vis-a-vis § 553(a). See Laurentiis, 963 F.2d 1269, 1275

(f) Section 553(a) is a general provision which applies to different chapters, but section 1141(c) is a special provision applicable to Chapter 11 only, and, therefore, should take precedence.

CONCLUSION

In view of the foregoing position, this petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, to review its decision filed June 15, 2001 in Civil Appeal No. 99-16910 consolidated with No. 99-16871, rehearing and rehearing en banc on which was denied on August 9, 2001, deserve to be granted to resolve the conflict between the Ninth Circuit and the Third Circuit on statutory construction of Bankruptcy Code § 1141(c) read with § 553(a) on the crucial question presented herein, vitally affecting rehabilitation through reorganization under Chapter 11 of the Code nationwide, including rehabilitation of petitioner and his wholly owned and managed subsidiary, Consort Constructions (P) Ltd. ("Consort").

PRAYER

With utmost respect and in all humility, petitioner, as a citizen of the United States of America, acting as the representative of his Chapter 11 retained estate and that of his subsidiary, Consort, in their Chapter 11 reorganization cases,

and obligated under ¶¶ 7.0.5 and 14.1 of his confirmed plan of reorganization to seek relief from this Court so as to recover dues for work done for Alstom AG, withheld by it as security for alleged setoff right of disputed claim of damages it has not established in any court or other forum since 1984, particularly since November 1991 when the Bankruptcy Court entered an order of relief under Chapter 11 in petitioner's reorganization proceeding; petitioner prays for the grant of this petition, which is crucial for him and his alter ego Consort's rehabilitation under the confirmed plan of reorganization.

RESPECTFULLY SUBMITTED this 9th day of February, 2002.

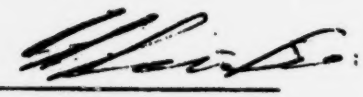
Balbir Singh Tuli
7373 E. Scottsdale Mall, Ste. 1
Scottsdale, Arizona 85251
(480) 949-8000
Pro Se Petitioner as the Representative of his Chapter 11 Estate retained under the Confirmed Plan of Reorganization.

PROOF OF FILING BY COURIER SERVICE

Under penalty of perjury under the laws of the United States of America, I. Balbir Singh Tuli, state that an original and thirty-nine copies (total forty) of his Petition for a writ of certiorari and of an Appendix therewith, are transmitted this 9th day of February, 2002 by Federal Express Courier Service for delivery on next working day, Monday, February 11, 2002, to:

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
1 First Street N.E.
Washington, D.C. 20543-0001
(202) 479-3000

Executed this 9th day of February, 2002, in the county of Maricopa, State of Arizona.

BALBIR SINGH TULI: 

PROOF OF SERVICE
ON RESPONDENTS'
COUNSEL: ENCLOSED